

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.4.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

WRIT APPEAL NOS.1218, 1219, 1224, 1226, 1229, 1232 AND 1234 OF
2019

1. The Director General of Income Tax (INV.), Tamil Nadu & Pondicherry, New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
2. The Principal Director of Income Tax (INV.), Investigation Wing, New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34. ...Appellants 1 & 2
in all the WAs
3. The Additional Director of Income Tax, Investigation, Unit-3, New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
4. The Deputy Director of Income Tax, Investigation, Unit 3(2), New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
5. The Deputy Director of Income Tax, Investigation, Unit 4(3), New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
6. The Assistant Commissioner of Income Tax, Circle 1, No.138/3, LMR Shopping Arcade, III Floor, Salem Road, Namakkal-1. ...Appellants 3 to 6
in WA.Nos.1218,
1219, 1224, 1226,
1229 & 1234/2019

7. Mr.B.Jayaraghavan, Additional
Director of Income Tax, Investigation,
Unit 3, New No.46, Old No.108,
MG Road, Nungambakkam,
Chennai-34.
8. Mr.Rohan Raj, Deputy Director of Income
Tax, Investigation, Unit 3(2), New No.46,
Old No.108, MG Road, Nungambakkam,
Chennai-34.

..Appellants 3 & 4
in WA.No.1232 of 2019

Vs

1. T.S.Kumaraswamy, Proprietor,
Christy Friedgram Industry,
Tiruchengode.Respondent in
all the WAs
2. Press Council of India, Soochna
Bhavan, 8-CGO Complex,
Lodhi Road, New Delhi-3.

....R2 in WA.No.1232 of 2019

APPEALS under Clause 15 of the Letters Patent against the
common order dated 31.1.2019 passed respectively in
W.P.Nos.29016, 29001, 29033, 30771, 30765, 31291 and 28991 of
2018.

Prayers in W.P.Nos.29016, 29001, 29033, 30771, 30765, 31291 and
28991 of 2018:-

WP.No.29016 of 2018:-

Writ Petition filed under Article 226 of Constitution of
India, seeking writ of prohibition restraining the respondents,
their men, agents and employees from passing any order of
attachment, provisional or otherwise, against the petitioner,
his assets and properties.

WP.No.29001 of 2018:-

Writ Petition filed under Article 226 of Constitution of
India, seeking writ of prohibition restraining the respondents,
agents employees or any person in consequent possession, from in
any manner using, divulging or relying upon the material, books
of accounts, documents, electronic records, affidavits and
statements procured by them as a consequence of the illegal
search conducted by the Respondents purportedly under S.132 of
the Act.

WP.No.29033 of 2018:- Writ Petition filed under Article 226 of Constitution of India, seeking writ of declaration declaring that the search and seizure conducted by the Respondents purportedly under S. 132 of the Act in relation to the case of the petitioner and all consequential proceedings thereto as wholly without jurisdiction, illegal, arbitrary and unconstitutional.

WP.No.30765 of 2018:- Writ Petition filed under Article 226 of Constitution of India, seeking writ of declaration declaring that the power exercised by the respondent officials under Section 132 (1) of the Income Tax Act, 1961 against the petitioner during the search proceeding including the seizure of materials, records and obtaining of statements is abusive, illegal and ultra vires and provisions of the Income Tax Act, 1962 and violative of the Constitution of India as well as the procedure laid down under the appropriate law and therefore materials and evidence are inadmissible in any proceedings and to hold all such and subsequent proceeding is void ab initio.

WP.No.30765 of 2018:- Writ Petition filed under Article 226 of Constitution of India, seeking writ of declaration declaring that the Panchnama dated 9.7.2018 including its content of Warrant of Authorization issued by the respondent officials under Section 132 (1) of the Income Tax Act, 1961 against the petitioner is invalid, illegal and thereby all the consequential proceedings are also declared illegal.

WP.No.31291 of 2018:- Writ Petition filed under Article 226 of Constitution of India, seeking writ of declaration Directing transfer all files relating to the Income Tax search and seizure proceedings and the consequent proceedings against the petitioner to any other independent impartial officers, who have not so far participated in the search and seizure operations against the petitioner and withdraw the seventh and eighth respondents from in any manner being involved in the proceedings concerning the petitioner.

WP No.28991 of 2018:- Writ Petition filed under Article 226 of Constitution of India, seeking writ of certiorarified Mandamus calling for the records of the 4th Respondent, contained in the Warrant for Attachment of Properties dated 24/10/2018 and quash the same as illegal, arbitrary and contrary to law and consequently restrain the respondents, their subordinates, agents and employees from preventing the petitioner from using, operating or withdrawing sums from his bank accounts, receivables and all assets and properties of the petitioner.

For Appellants : Mr.T.Ravikumar, SSC

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM, J)

These appeals filed by the appellant - Department are directed against the common order dated 31.1.2019 passed in WP.Nos.29016, 29001, 29033, 30771, 30765, 31291 and 28991 of 2018 in so far they relate to certain adverse remarks made against the Officer of the appellant - Department and their Senior Standing Counsel. It is relevant to point out that one of the appeals namely WA.No.1232 of 2019 is filed by the Department by arraying (i) the Additional Director of Income Tax, Investigation, Unit-3 and (ii) the Deputy Director of Income Tax, Investigation, Unit 3(2) in their personal capacity.

2. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellants.

3. Before we go into the contentions made by the learned Senior Standing Counsel for the appellants, we pose a question to ourselves as to whether we are required to issue notice to the respondent herein - writ petitioner/assessee. To answer this question, we may straight away refer to a few decisions. One more question to be answered is as to whether the appeals filed by the Department would be sufficient to consider as to whether the remarks made by the learned Single Judge as against the Officer of the Department and its Senior Standing Counsel can be maintained.

4. In the decision in the case of State of Maharashtra Vs. Public Concern for Governance Trust [reported in 2007 (3) SCC 587], the State filed an appeal to expunge the remarks made against the Chief Minister of the State. The Hon'ble Supreme Court considered the questions as to whether the appeal filed by the State (State of Maharashtra) was maintainable and as to whether the State was competent to maintain the appeal for ordering expunction of remarks and observations/strictures made against the then Chief Minister. It was held in the said decision that the appeal filed by the State to expunge the remarks/observations/strictures made against the then Chief Minister was maintainable. Therefore, we hold that these appeals filed by the appellant - Department to expunge the remarks against their Officer as well as against the Senior Standing Counsel for the appellant - Department are maintainable.

5. The next aspect that needs to be answered is as to whether the respondent herein - assessee/writ petitioner should be heard in the matters and as to whether notice has to be issued.

6. The decision in the case of Sharad Bansilal Vakil Vs. Cibatual Ltd. [reported in 1997 (10) SCC 378], was pursuant to an appeal necessitated by the observations in the judgment of the High Court, which were of personal nature. The Hon'ble Apex Court found that the observations were not called for, allowed the appeal and the observations made against the appellant personally in various paragraphs of the judgment of the High Court were set aside and should be deemed to stand deleted. In the said proceedings also, the parties to the litigation were not put on notice.

7. Very recently, the Hon'ble Supreme Court in the case of Sanjay Jain Vs. Nu Tech Corporate Service Ltd. [SLP (Civil) Diary No.48031/ 2018 dated 01.3.2019], considered the correctness of an order passed by the Division Bench of the High Court of Bombay, which, while setting aside an order of adjustment of refund due for the assessment years 1993-94 and 1995-96 against the demands for the assessment years 2003-04 and 2009-10, adversely commented upon the conduct of the petitioner therein (Sanjay Jain), who was the then Deputy Commissioner of Income Tax. The Hon'ble Supreme Court noted that the special leave petition had been preferred by the petitioner therein only against the adverse remarks made against him in the impugned order of the High Court. It was pointed out that the directions issued by the High Court were without notice to the petitioner therein and were wholly unnecessary having regard to the lis before the High Court. Accordingly, the Hon'ble Supreme Court expunged the adverse remarks made against the petitioner therein in the judgment and order of the High Court as well as the directions issued against the petitioner therein. It was further pointed out that since the assessee in the said case was not concerned with the grievance, which had been made by the petitioner before the Hon'ble Supreme Court, it was not necessary to issue notice to him in the special leave petition.

8. The aforementioned decisions are clear answer to the query framed by us and consequently, we hold that the respondent herein - writ petitioner/assessee is not concerned about the observations/ adverse remarks made against the officer of the Department and their Senior Standing Counsel and consequently, we hold that no notice is required to be issued to the respondent herein - writ petitioner/assessee.

9. Having steered clear of this legal position, we will now examine one more crucial aspect, which has been brought to the notice of this Court even earlier when we dispensed with the production of the certified copy of the impugned order by a common order dated 26.3.2019 in CMP.Nos.7664, 7666, 7668, 7669, 7672, 7676 and 7680 of 2019 wherein we recorded reasons as to why the prayer needed to be granted, as the common order dated

31.1.2019 passed by the learned Single Judge was an order placing the matter before My Lord the Hon'ble The Chief Justice to be placed before any other Court and since such order was held to be a non draftable order, we dispensed with the production of the certified copy of the order subject to production of the web copy.

10. At that juncture, it was brought to our notice by the learned Senior Standing Counsel for the appellants that the respondent herein - writ petitioner/assessee had filed Special Leave Petitions to appeal (C) Nos.6522 to 6528 of 2019 before the Hon'ble Supreme Court against the impugned common order dated 31.1.2019. The said special leave petitions were disposed of by the Hon'ble Supreme Court by a common order dated 11.3.2019 by issuing the following directions:

"By his order dated 31 January 2019, the Single Judge after recording the sequence of events, directed that the papers be placed before the Chief Justice of the High Court of Judicature at Madras so that appropriate orders for further posting of the proceedings can be issued.

Since the learned Judge has refrained from hearing of the case any further, it is now for the Chief Justice of the High Court of Judicature at Madras to assign it to an appropriate Bench.

We are of the view, on perusing the contents of the order, that it would be appropriate if the Chief Justice of the High Court expeditiously assigns the hearing of the proceedings to a Division Bench, to be specifically nominated in that behalf.

Save and except for the aforesaid observation, we see no reason to entertain the Special Leave Petition which is accordingly, dismissed.

Pending application(s), if any, shall stand disposed of."

11. The subject matter of appeals filed by the respondent herein - writ petitioner/assessee before the Hon'ble Supreme Court did not concern the observations/adverse remarks made in the impugned common order against the officer of the Department and their Senior Standing Counsel. Therefore, the present appeals are maintainable before this Court and it cannot be stated that the common order dated 31.1.2019 passed by the Writ Court stood merged with the order passed by the Hon'ble Supreme Court dated 11.3.2019, as the order in the said special leave petitions does not relate to the present issue. Thus, we are

fully justified in entertaining the present appeals filed by the appellant - Department.

12. The impugned common order was passed by the learned Single Judge after a memo dated 29.1.2019 was filed by the appellant - Department in the Registry on 29.1.2019. We have perused the said memo and we find that the prayer sought for in the said memo is for granting 15 days' time for final hearing of the said writ petitions, which were 7 in number. The sum and substance of what had been stated in the said memo was that the appellant - Department wanted the said writ petitions to be adjourned by a period of 15 days so as to enable their Special Counsel, who had been nominated to appear in the matter before the Court and make his submissions. It had been further stated that on instructions given by the Special Counsel nominated by the Government, the said memo had been filed. The said memo had been signed by the Principal Director of Income Tax (Investigation), Chennai and filed before the Registry with the docket mentioning the names of the Standing Counsel appearing for the appellant - Department.

13. The respondent herein - writ petitioner/assessee filed a counter to the said memo and we are surprised as to why such a counter was required, as what was sought for in the said memo was an innocuous prayer for adjourning the matter for 15 days. We need not ponder as to what prompted the said memo to be filed by the appellant - Department and as to whether the respondent herein - writ petitioner/assessee should be permitted to file a counter to the said memo, as we are concerned only with the aspect as to whether the remarks/observations made in the impugned common order as against the officer of the appellant - Department and its Senior Standing Counsel require to be expunged or not.

14. The first aspect, which needs to be considered, is as to whether the officer of the Department and their Senior Standing Counsel were put on notice before the observations were made. The answer to this question is a clear 'No', as could be seen from the impugned order. In such circumstances, can the observations/remarks stand. We look for an answer in the following decisions :

15. In the case of State of U.P. Vs. Mohammed Naim [reported in AIR 1964 SC 703], the Hon'ble Supreme Court pointed out that it had been judicially recognised that in the matter of making disparaging remarks against persons or authorities, whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider:-

(a) whether the party whose conduct is in question is before the court or has an

opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

It was further pointed out that it had also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve.

16. In the decision in the case of Niranjana Patnaik Vs. Sashibhushan Kar [reported in 1986 (2) SCC 569], after referring to the decision in the case of Mohammed Naim, the Hon'ble Supreme Court pointed out that it is settled law that harsh and disparaging remarks are not to be made against persons and authorities, whose misconduct comes into consideration before courts of law unless it is really necessary for the decision of the case as an integral part thereof to animadvert on that conduct. Accordingly, the Hon'ble Supreme Court held that the adverse remarks against the appellant therein were neither justified nor called for. It was further pointed out that higher the forum and greater the powers, the greater the need for restraint and the more mellowed reproach should be.

17. In the decision in the case of A.M.Mathur Vs. Pramod Kumar Gupta [reported in 1990 (2) SCC 533], the former Advocate General of the State of Madhya Pradesh filed an appeal to expunge certain derogatory remarks made against him by the High Court. The Hon'ble Supreme Court pointed out that judicial restraint might better be called judicial respect i.e. respect by the Judiciary; respect to those, who come before the court as well as to other coordinate branches of the State, the Executive and the Legislature, that there must be mutual respect and that when these qualities fail or when litigants and public believe that the Judge had failed in these qualities, it will be neither good for the Judge nor for the judicial process. Ultimately, the remarks made against the former Advocate General were expunged.

18. In the decision in the case of State of Bihar Vs. P.P.Sharma [reported in 1992 Supp. (1) SCC 222], the Hon'ble Supreme Court held that it is settled law that the person, against whom mala fides or bias was imputed, should be impleaded co-nominee as a party respondent to the proceedings and given an opportunity to meet those allegations and that in his/her absence, no enquiry into the allegations would be made otherwise it itself is violative of the principles of natural justice, as it amounts to condemning a person without opportunity.

19. In the decision in the case of Dr.Dilipkumar Deka Vs. State of Assam [reported in 1996 (6) SCC 234], the Hon'ble Supreme Court referred to the decision in the case of Mohammed Naim, which was quoted with approval in the decisions in the cases of

(i) Jage Ram, Inspector of Police Vs. Hans Raj Midha [reported in AIR 1972 SC 1140],

(ii) R.K.Lakshmanan Vs. A.K.Srinivasan [reported in AIR 1975 SC 1741] and

(iii) Niranjana Patnaik Vs. Sashibhusan Kar [reported in AIR 1986 SC 819].

It was pointed out that in spite of the above catena of decisions, the learned Judge did not, before making the remarks, give any opportunity to the appellants therein, who were, admittedly, not parties to the revision petition to defend themselves. It was further pointed out that it cannot be gainsaid that the nature of remarks the learned Judge made, cast a serious aspersion on the appellants affecting their character or reputation and may ultimately affect their career also. The Hon'ble Supreme Court ultimately held that the Court should have used a temperate language and moderate expressions while criticising the appellants therein and shown judicious restraint, allowed the appeal and quashed the disparaging remarks made against the appellants therein.

20. In the decision in the case of State of Karnataka Vs. Registrar General, High Court of Karnataka [reported in 2000 (7) SCC 333], the challenge was to an order passed by the Division Bench of the High Court of Karnataka on the ground that it went outside the scope of the lis before it and made certain observations, which are not in tune with the perceptions of judicial exercise. The Hon'ble Supreme Court, at the very outset, pointed out that for disposal of the said appeal, there was no necessity to issue notice to the sole respondent therein namely the Registrar General of the High Court of Karnataka, as he would have nothing to say about the impugned directions and therefore disposed of the matter without bringing the respondent therein before the Court.

21. As pointed out by us earlier, the cases on hand are also on the same pedestal, as the respondent herein - writ petitioner/ assessee can say nothing about the remarks made by the learned Single Judge against the officer of the appellant Department and their Senior Standing Counsel.

22. Reverting back to the decisions, the Hon'ble Supreme Court in the case of State of Karnataka Vs. Registrar General, High Court of Karnataka, referred to the decision in the case of

Mohammed Naim and other decisions and set aside the directions/remarks made by the Division Bench of the High Court of Karnataka.

23. In the decision in the case of Manish Dixit Vs. State of Rajasthan [reported in 2001 (1) SCC 596], the Hon'ble Supreme Court pointed out that it had repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned, he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures and that such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. After referring to the earlier decision in the case of Dr.Dilipkumar Deka, the appeal was allowed and the disparaging remarks were expunged.

24. In the decision in the case of State of Gujarat Vs. K.V.Joseph [reported in 2001 (2) SCC 156], the Court, while quashing the remarks made, observed that there is violation of the principles of natural justice, as no notice was sent in the matter for the purpose of any explanation neither any explanation obtained and consequently, held that the remarks cannot be sustained.

25. In the decision in the case of Testa Setalvad Vs. State of Gujarat [reported in 2004 (10) SCC 88], the Court, while setting aside the observations made, held that the observations did not, prima facie, appear to have any relevance to the subject matter of dispute before the High Court and uncalled for observations were directed to be set aside. It was also held that they must be treated as having never existed or been part of the High Court judgment.

26. In the decision in the case of Samya Sett Vs. Shambu Sarkar [reported in 2005 (6) SCC 767], the Hon'ble Supreme Court, in the opening paragraph of the judgment, pointed out that the appeal reminded them of a golden advice given by the Supreme Court before more than four decades in the decision in the case of Mohammed Naim and proceeded to consider the question as to whether the remarks could be sustained. The Hon'ble Supreme Court ultimately held that the remarks were uncalled for and unwarranted and were accordingly quashed.

27. In the decision in the case of Public Concern for Governance Trust, where the appeal was filed by the State to expunge the remarks against the then Chief Minister, the appeal was held to be maintainable and the serious aspersions cast on the then Chief Minister affecting his reputation having been

made without giving an opportunity were quashed.

28. In the decision in the case of Parkash Singh Teji Vs. Northern India Goods Transport Company Private Limited [reported in 2009 (12) SCC 577], the Hon'ble Supreme Court, while pointing out about the judicial restraint and discipline, referred to the decision in the case of 'K', a Judicial Officer, In re, [reported in (2001) 3 SCC 54] wherein it was held that the overall test is that criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve.

29. In the decision in the case of Amar Pal Singh Vs. State of Utter Pradesh [reported in 2012 (6) SCC 491], the Court made observations as to how the Superior Court has to employ the language in a judgment and on facts, having found that the said procedure had not been followed, the Hon'ble Supreme Court expunged the remarks made therein.

30. In the decision in the case of Om Prakash Chautala Vs. Kanwar Bhan [reported in 2014 (5) SCC 417], the Hon'ble Supreme Court pointed out that reputation is fundamentally a glorious amalgam and unification of virtues, which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. It was further observed that it is a nobility in itself, for which, a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea, that the said virtue has both horizontal and vertical qualities and that when reputation is hurt, a man is half-dead.

31. In the decision in the case of Arun Devendra Oza Vs. State of Gujarat [reported in 2001 (10) SCC 195], once again the Hon'ble Supreme Court referred to the celebrated decision in the case of Mohammed Naim and set aside the adverse remarks made against the appellant therein.

32. In the decision in the case of Lanka Venkateswarlu Vs. State of Andhra Pradesh [reported in 2011 (4) SCC 363], the Hon'ble Supreme Court referred to the decision in the case of Mohammed Naim and observed that the use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by the Supreme Court in several cases.

33. In the decision in the case of Badri Prasad Mathur Vs. Administrator, Nagpur Palika Parishad [reported in 1996 MPLJ 746], the appeal was filed by a party to the litigation to expunge the remarks made against his counsel. The appeal was held to be maintainable and the Court, after referring to the celebrated decision in the case of Mohammed Naim and other

decisions, allowed the appeal and expunged the remarks.

34. In the decision in the case of Shyam Narayan Tripathi Vs. State of M.P. [reported in 2001 (2) MPLJ 234], a petition was filed under Section 482 of the Criminal Procedure Code to expunge the remarks made against the advocate, who had filed a memo before the Court seeking for an adjournment on the ground of illness. This memo was rejected by the Court and certain remarks were made against the advocate. The remarks, having been made without notice or opportunity to the concerned advocate, were held to be bad, apart from holding that the remarks were unjustified and uncalled for and therefore, liable to be expunged.

35. In the decision a learned Single Judge of this Court in the case of T.Vetriselvan Vs. Tamil Nadu Mercantile Bank Limited [reported in 2002 (1) CTC 513], one of the questions, which fell for consideration is as to the what was the effect of an opinion given by a counsel to a party. It was held that the opinion given by a counsel was mainly based upon the records produced by his client and that the plaintiff had no right whatsoever to question the same or find fault with the opinion.

36. In the decision in the case of K.Ponnammal Vs. A.Loganathan [reported in 2010 (2) CTC 63], a learned Single Judge of this Court referred to Section 126 of the Indian Evidence Act and held that this protective umbrella also saves the counsel from unwanted and unnecessary proceedings.

37. The legal principle that can be culled out from the above decisions is that unwarranted comments and remarks were not called for and what was important to bear in mind was as to whether the three cardinal tests laid down by the Hon'ble Supreme Court in the decision in the case of Mohammed Naim had been complied with. One of those three tests is as to whether the party, whose conduct is in question is before the court or has an opportunity of explaining or defending himself. In the instant case, neither the officer of the Department nor its Senior Standing Counsel had an opportunity of explaining or defending themselves. Therefore, the first test laid down in the decision in the case of Mohammed Naim has not been fulfilled in the instant case.

38. The second test is as to whether there is evidence on record bearing on that conduct justifying the remarks. We have carefully gone through the memo filed by the Department and the observations made by the learned Single Judge. The memo sought for an innocuous prayer to adjourn the matter by 15 days. It referred to engagement of a Special Counsel from New Delhi, who

had been nominated pursuant to a request made by the Director General of Income Tax (INV.), Chennai vide letter dated 17.12.2018. Thus, in our considered view, there was nothing to infer that the Senior Standing Counsel for the Department overstepped his brief or for that matter the conduct of the officer warranted certain observations against her. Therefore, we hold that the second test also does not stand fulfilled.

39. The third test is as to whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The matter arises under the Income Tax Act and the respondent herein - writ petitioner/assessee challenged the search and seizure proceedings and other matters related and connected therewith. Earlier, the respondent herein - writ petitioner/assessee had filed an appeal in WA.No.2440 of 2018 before a Division Bench of this Court, to which, one of us (TSSJ) was a party. Initially, the order that was passed on 03.12.2018 was accepted by the respondent herein - writ petitioner/assessee. Subsequently, the said writ appeal was finally disposed of on 12.12.2018. The judgment dated 12.12.2018 made in WA.No. 2440 of 2018 attained finality, as no appeal was preferred by the respondent herein - writ petitioner/assessee against the said judgment.

40. In the said scenario, we are of the clear view that the observations made by the learned Single Judge were not necessary for a decision in the case nor it is an integral part thereof. Therefore, we hold that the third test laid down by the Hon'ble Supreme Court in the decision in the case of Mohammed Naim does not stand satisfied.

41. The learned Senior Standing Counsel for the appellants referred to Rule 2(a) of the Madras High Court Rules to regulate the proceedings under Article 226 of The Constitution of India wherein there is a mention about affidavits, petitions, counter affidavits, reply to counter affidavits and other supplemental affidavits. Hence, it is submitted that filing a reply or rejoinder or surrejoinder cannot be stated to be outside the procedural rules. It is further pointed out that in the counter affidavit filed by the respondent herein - writ petitioner/assessee to the memo filed by the Department before the learned Single Judge, there is a reference to Rule 2(d) of the said Rules and that the said Rule is no way applicable and irrelevant to the proceedings.

42. In our considered view, we need not dwell into this aspect, as we are required to decide as to whether the adverse remarks made by the learned Single Judge against the officer of the Department and its Senior Standing Counsel deserve to be expunged or not.

43. The learned Counsel for the appellants has contended that the Senior Standing Counsel, who had been nominated by the Department has had an excellent academic record from school days, that he has penned various articles, which have been published in law journals and that more than 200 judgments and orders, in which, he appeared, were reported in law journals. These are placed before us to support their stand that the Senior Standing Counsel for the Department deserves nomination as a Standing Counsel for the Department.

44. Considering the fact that none of the three tests as laid down by the Hon'ble Supreme Court in the decision in the case of Mohammed Naim has been fulfilled, we are of the clear view that the adverse remarks/ observations made against the officer/officers of the appellant - Department or its Senior Standing Counsel are not warranted and accordingly, they need to be expunged.

45. In the result, the writ appeals are allowed, the adverse remarks/ observations made against the officer/officers of the appellant - Department or its Senior Standing Counsel in the common order dated 31.1.2019 are expunged and consequently, they must be treated as having never existed or being a part of the common order passed by the learned Single Judge dated 31.1.2019 in the said writ petitions.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Press Council of India,
Soochna Bhavan, 8-CGO Complex,
Lodhi Road, New Delhi-3.

Copy To

1. The Director General of Income Tax
(INV.), Tamil Nadu & Pondicherry,
New No.46, Old No.108, MG Road,
Nungambakkam, Chennai-34.

2. The Principal Director of Income Tax (INV.), Investigation Wing, New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
3. The Additional Director of Income Tax, Investigation, Unit-3, New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
4. The Deputy Director of Income Tax, Investigation, Unit 3(2), New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
5. The Deputy Director of Income Tax, Investigation, Unit 4(3), New No.46, Old No.108, MG Road, Nungambakkam, Chennai-34.
6. The Assistant Commissioner of Income Tax, Circle 1, No.138/3, LMR Shopping Arcade, III Floor, Salem Road, Namakkal-1.

+6cc to Mr.T.Ravikumar,SSC for Income Tax,in S.R.No.32339, 32285

WA.Nos.Nos.1218, 1219,
1224, 1226, 1229, 1232
and 1234 of 2019

GJ(CO)
CS/24/05/2019

सत्यमेव जयते

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